

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA, and

RASIER, LLC

*Plaintiffs,*

v.

CITY OF SEATTLE *et al.*

*Defendants.*

Case No. 17-cv-00370-RSL

**NOTICE OF PLAINTIFF  
CHAMBER OF COMMERCE  
REGARDING POSSESSION,  
CUSTODY, OR CONTROL OF ITS  
MEMBERS' DOCUMENTS**

In a joint submission regarding discovery, Defendant City of Seattle sought an order from this Court compelling Plaintiff Chamber of Commerce to produce documents belonging to its members, including Lyft, Inc. and Eastside for Hire. (Dkt. 113.) The Chamber responded that it has no obligation to do so because it lacks possession, custody, or control of its members' documents.

On March 10, this Court ruled on the submission. (Dkt. 116.) The Court explained that a party served with a discovery request is obligated to produce only those documents in its "possession, custody, or control." Fed. R. Civ. P. 34(a)(1). And in the Ninth Circuit, "[a] party may be ordered to produce a document in the possession of a non-party entity if that party has a

1 legal right to obtain the document or has control over the entity who is in possession of the  
2 document.” *Campos-Eibeck v. C R Bard Inc.*, 2020 WL 835305, at \*2 (S.D. Cal. Feb 20, 2020).  
3 In light of that standard, the Court ordered the Chamber to “notify the Court whether it has the  
4 power to obtain and produce the documents requested by the City of Seattle in its First Set of  
5 Requests for Production,” given the Chamber’s “relationship with its members and whatever  
6 authorization gives it the right to pursue this litigation.” (Dkt. 116 at 4–5.)

7 The Chamber hereby notifies the Court that it has no legal power—other than invoking  
8 Rule 45 of the Federal Rules of Civil Procedure, which is precisely what Seattle has already  
9 done—to obtain and produce the requested documents from the Chamber’s members that are not  
10 parties to this litigation. All of the documents the City is seeking are in the possession, custody,  
11 and control of the Chamber’s members. No source of authority grants the Chamber the legal  
12 power to require businesses to produce documents for the purpose of litigation or  
13 otherwise. There is also no authority that gives the Chamber any legal control over any other  
14 independent business (such as Lyft and Eastside for Hire).

15 The Chamber brings any suit (including this one) because it believes it is in the best  
16 interests of the Chamber, its members, the broader business community, and indeed of the  
17 United States of America itself. Just like any corporate entity, the Chamber has the well-  
18 established right to bring suit in its own name, and has done so for decades. Sometimes the  
19 Chamber brings suit because of its own injury—injury caused to the Chamber itself as an  
20 organization—to establish Article III jurisdiction. *Chamber of Commerce v. SEC*, 412 F.3d 133,  
21 138 (D.C. Cir. 2005) (“the Chamber has suffered an injury-in-fact”). Sometimes the Chamber  
22 brings suit because of injuries to the myriad businesses, other associations, or individuals that are  
23 its members, and where it does so the Chamber relies upon the well-established doctrine of  
24 associational standing. That is this case, as this Court already correctly ruled. (Dkt. 66 at 6  
25 (finding that the Chamber has associational standing, in part because “[t]he third prong of the  
26 *Hunt* test is satisfied”). And sometimes the Chamber relies upon both its own injury and the

1 injuries of its diverse membership. *See, e.g., Nevada v. United States Dep't of Labor*, 275 F.  
 2 Supp. 3d 795, 800 (E.D. Tex. 2017) (“the Final Rule directly affects both Business  
 3 [Associations] and the employers they represent”). In all of these cases, the Chamber’s legal  
 4 right as a corporate entity to bring suit is a separate issue from how the Chamber establishes the  
 5 Article III jurisdiction of a federal court to decide the particular case.

6 This Court’s March 10 order nonetheless states that, if the Chamber lacks the power to  
 7 obtain and produce its members’ documents, then it is “not an appropriate representative of its  
 8 members entitled to invoke the court’s jurisdiction.” (Dkt. 116 at 5.) The Chamber disagrees for  
 9 the reasons already stated in the joint discovery submission. (Dkt. 113 at 12). The Court’s  
 10 anticipatory conclusion is wrong for additional reasons. To begin with, the third prong of the  
 11 *Hunt* test for associational standing is “prudential,” not jurisdictional. *Cent. Delta Water Agency*  
 12 *v. United States*, 306 F.3d 938, 954 n.9 (9th Cir. 2002). (*Contra* Dkt. 116 at 5 n.1.) And in any  
 13 event, “standing is to be determined as of the commencement of suit,” not afterward. *Lujan v.*  
 14 *Defenders of Wildlife*, 504 U.S. 555, 570 n.5 (1992). This Court previously concluded (rightly)  
 15 that the Chamber has standing to pursue this action on behalf of its members.

16 If this Court concludes (wrongly) that the Chamber now lacks standing because it cannot  
 17 produce documents from other persons that the City could obtain via other means under the  
 18 Federal Rule of Civil Procedure, then the Chamber requests that the Court enter final judgment  
 19 dismissing the Chamber with an express determination that “that there is no just reason for  
 20 delay” of an appeal. Fed. R. Civ. P. 54(b).

1 Dated: April 7, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties who have appeared in this case.

DATED: April 7, 2020, at Seattle, Washington.

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